

Application No. 10/611,769

REMARKS

Reconsideration and continued examination of the above-identified application are respectfully requested.

After the entry of this amendment, namely the cancellation of claims 63-67, claims 1-22 and 38-62 remain active in this case, and 23-37 remain withdrawn. Method claims 63-67 directed to a non-elected invention have been canceled. No further amendments are made to the active claims in this amendment.

The withdrawal of all prior rejections under 35 U.S.C. §112 and all rejections based on prior art is noted with appreciation.

Claim 1 stands rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,803,334 to Mitzutani. Applicant respectfully traverses this rejection. Claim 1 as presently presented recites "a fibrous outer layer and an adhesive layer, wherein . . . the fibers of the fibrous are anchored in the adhesive layer." Claim 1 requires an adhesive layer. On the other hand, the Mitzutani reference does not disclose an adhesive layer, and cannot anticipate claim 1 or render claim 1 obvious. Mitzutani discloses in FIG. 2 a top fibrous layer 12 with loops 14a. Fibrous layer 12 is attached to a stretchable porous film 11, which is a thin film with holes formed thereon, as shown in FIGS. 3 and 4. Porous film 11 is not an adhesive layer. The Examiner citing to column 9, lines 46-50 of Mitzutani to show that "the fibrous face 12 can be adhered to the porous film 11 via a layer of adhesive." (emphasis added). However, this passage does not disclose a separate layer of adhesive. This passage (in italics) along with additional text from the same paragraph is reproduced below:

At the fixing lines 13a and 13b, in the shown embodiment, the porous film 11 and the fibrous layer 12 are fusion bonded by heat seal, sonic seal or the like. In the alternative, the porous film 11 and the fibrous layer 12 may be bonded with an adhesive at respective fixing lines. *In the further alternative, the porous film 11 and the fibrous layer 12 may be fixed by using fusion bonding and adhesive bonding together. For the adhesive, use can be made of a pressure-sensitive adhesive.* In such case, application amount of the pressure sensitive adhesive is preferably in the range of 0.5 to 5 g/m². Preferred line width (thickness) of the fixing lines 13a and 13b is preferably in the range of 0.5 to 5 mm and more preferably in the range of 0.3 to 3mm.

(Col. 9, lines 42-54). The passage cited by the Examiner does not disclose a layer of adhesive; it

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simply predicts that fibrous layer 12 and film 11 can be bonded by fusion bonding or adhesive along fixing lines 13a and 13b, but does not explain how or where. Furthermore, the range of 0.5 to 5 g/m² of adhesive is simply too little to form a layer.

Mitzutani actually discloses using adhesive at fixing lines 13a and 13b to bond top fibrous layer 12 to porous film 11. As shown in FIGS. 5, 6, 7 and 8, fixing lines 13a and 13b (and fixing lines 15, 16, 17 and 18) are discrete lines unconnected to each other and do not form a layer. Hence, claim 1 as presently presented is not anticipated by the Mitzutani reference.

Additionally, the Mitzutani reference cannot render claim 1 obvious, because one of ordinary skill in the art would not combine the teachings of Mitzutani with his/her own knowledge or with other reference(s) to add an adhesive layer to Mitzutani. Mitzutani teaches an improved female sanitary napkin with a fibrous layer 12. This layer 12 comprises multiple discrete strips of fibrous materials located in a spaced apart manner, as shown in FIGS. 5-8. If a layer of adhesive were to be hypothetically added, the adhesive would be exposed in the gaps between strips 12 and would stick to the wearer. Mitzutani specifically requires that the strips of fibrous material provide soft contact feelings and comfort to the wearer. (See Summary, col. 2, lines 11-13, Background, col. 1, lines 34-37, and throughout the specification.) One of ordinary skill would not add a layer of adhesive to a surface of a sanitary napkin, such as the one disclosed in Mitzutani, since that would make the product stiff. The hypothetical addition of adhesive also exposes the adhesive to the wearer through the gaps between strips of fibrous layer 12 and sticks to the wearer. Hence, claim 1 is also non-obvious over Mitzutani.

Hence, independent claim 1 is patentable over Mitzutani and over Mitzutani in combination with other art of record. Independent claim 62 is patentable for the substantially the same reason as claim 1.

Claims 2-22 and 38-61 depend on claim 1 and recite further limitations therefrom. Hence, these claims are presently patentable over the cited art. Applicant reserves the right to address the related rejections stated in the Office Action including, but not limited to, all hypothetical combination of Mitzutani with other references and alleged inherent properties not specifically disclosed in the cited art.

Since claim 1 is generic and patentable, Applicant respectfully request that withdrawn claims 23-37 be considered at this time.

Concerning the provisional obviousness-type double patenting rejection over co-pending

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U.S. Application Serial No. 10/611,769 (Docket No. SWZ-007). Applicant traverses the Examiner's decision that claims 1-22 and 38-62 are not patentably distinct from claims 1-34 and 56-59 of the co-pending '769 application.

First, the Examiner stated in paragraph 12 of the Office Action that "both [the present and '769] applications recite a fibrous face with elevated and depressed areas with the depressed areas adhesively attached to the rest of the composite." (emphasis added). Applicant respectfully directs the Examiner's attention to Section 804 of the M.P.E.P. This section clearly states that "the focus of any double patenting analysis necessarily is on the claims in the multiple patents or patent applications involved in the analysis." (emphasis added). (See also sub-section 804.II.B.) Applicant submits that similar disclosures, if any, in the specification of the applications are not relevant to and cannot support an obviousness-type double patenting rejection. Furthermore, since the '769 application and the present application are filed on the same day, they are not available as prior art vis-à-vis each other.

Second, claims 1-22 and 38-62 of the present invention are not obvious in view of claims 1-34 and 56-59 of the co-pending '769 patent application, because among many other reasons while the claims of the present invention recite "depressed areas" and "elevated areas", the claims of the '769 patent application do not. On the other hand, while the claims of the '769 application recite a composite with a fibrous face layer forming at least a portion of a top surface and with legs dependent therefrom, the claims of the present invention do not. These limitations are distinct and non-obvious from each other.

Hence, Applicant respectfully requests that the obviousness-type double patenting rejection be withdrawn.

The remarks above place the present patent application in form for allowance. This response is, therefore, a proper response to the Final Office Action, and its entry is respectfully requested.

No fee is due in connection with the filing of this response. If fees are necessary, please charge the additional fees to Deposit Account No. 50-1980. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

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The Examiner is respectfully requested to contact the undersigned by telephone should there be any remaining questions as to the patentability of the pending claims.

Respectfully Submitted,

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